

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Matilde Gattoni

Plaintiff,

- against -

Newsweek, LLC

Defendant.

Docket No. 18-cv-2419

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matilde Gattoni (“Gattoni” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Newsweek, LLC (“Newsweek” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of 22 copyrighted photographs. The photographs are owned and registered by Gattoni, an Italy-based professional photographer. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Gattoni is a professional photojournalist that covers humanitarian stories around the world, having a usual place of business at Via Botticelli, 22 20133, Milan, Italy.

6. Upon information and belief, Newsweek is a domestic limited liability company duly organized and existing under the laws of Delaware with a place of business in the judicial district located at 7 Hanover Square, 5th Floor, New York, New York, 10004.

7. Upon information and belief, at all times material hereto, Defendant has owned, controlled and operated the website at the URL: www.newsweek.com. (the “Website”).

8. Newsweek is a for-profit entity.

9. Newsweek, on the Website, publishes breaking news, cultural and entertainment articles.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

10. Gattoni photographed 22 images of area affected by the 2004 Indian Ocean tsunami (“the Photographs”). A true and correct copy of the Photographs was published by Newsweek, under license, in a December 25, 2014 article titled *10 Years After Indian Ocean Tsunami, The Coast, And Its People Have Bounced Back* (the “Article”). A true and correct copy of a print-out of the Article and the Photographs is attached hereto as Exhibit A.

11. Gattoni is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

12. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-0023-284, effective as of October 14, 2016. A True and correct copy of Copyright Registration Number VA 2-0023-284 is attached hereto as Exhibit B.

B. Defendant's Infringing Activities

13. Newsweek purchased a license to use the Photographs in the Article.

14. Upon information and belief, Newsweek, without authorization, distributed the photographs to at least one additional outlet, for a fee, by transferring the Article to Repubhub, a republishing service located at the URL: <https://repubhub.icopyright.net/> ("Repubhub").

15. Repubhub on its website states that distributing work on repubhub creates "a new revenue stream," and that "repubHub exposes your content to new audiences, creating new revenue...It gives brand exposure and links back to your site. repubHub broadens distribution of your content, offering the potential to gain new readers."

16. Defendant licensed the Photographs from Plaintiff for use in the Article, and Plaintiff did not authorize Newsweek to distribute the Photographs, or any other use.

17. Defendant did not have Plaintiff's permission or consent to distribute the Photographs.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST NEWSWEEK)
(17 U.S.C. §§ 106, 501)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Defendant infringed Plaintiff's copyright in the Photograph by distributing the Photographs. Defendant is not, and has never been, licensed or otherwise authorized to distribute the Photographs.

20. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

21. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

22. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

23. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECONDARY CLAIM FOR RELIEF
(CONTRIBUTORY COPYRIGHT INFRINGEMENT AGAINST NEWSWEEK)
(17 U.S.C. §§ 106, 501)

24. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-23 above.

25. Defendant caused others to infringe Plaintiff's copyright in the Photographs by distributing the Photographs and making the Photographs available for purchasing by other media outlets through Repubhub.

26. At least one other media outlet purchased rights to the Photographs through Repubhub, and published the Photographs without authorization from Plaintiff. See for example, Exhibit C, a true and correct copy of a print-out of an article using the Photographs and attributing the Photographs to Newsweek.

27. Newsweek knew the copyright in the photographs were owned by Plaintiff.

28. Newsweek knew that making the Photographs available on Repubhub would cause others to publish the Photographs.

29. The acts of Defendant complained of herein constitute contributory infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

30. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

31. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

32. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Newsweek be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Newsweek be ordered to remove the Photograph from Repubhub;

3. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
March 19, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Joseph A. Dunne
Joseph A. Dunne (JD0674)
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
JD@LiebowitzLawFirm.com

Attorneys for Plaintiff
Matilde Gattoni